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**UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA**

) Case No. 3:20-cv-00461
ABANTE ROOTER AND)
PLUMBING, INC., individually and on	) <u>CLASS ACTION</u>
behalf of all others similarly situated,)
Plaintiff,	) FIRST AMENDED COMPLAINT
	) FOR VIOLATIONS OF:
vs.)
	) 1. NEGLIGENT VIOLATIONS
	) OF THE TELEPHONE
LEADS2RESULTS, INC., OFER	) CONSUMER PROTECTION
ADLER, and DOES 1 through 10,	) ACT [47 U.S.C. §227(b)]
inclusive, and each of them,	) 2. WILLFUL VIOLATIONS
	) OF THE TELEPHONE
	) CONSUMER PROTECTION
	) ACT [47 U.S.C. §227(b)]
Defendants.	) 3. NEGLIGENT VIOLATIONS
	) OF THE TELEPHONE
	) CONSUMER PROTECTION
	) ACT [47 U.S.C. §227(c)]
	) 4. WILLFUL VIOLATIONS
	) OF THE TELEPHONE
	) CONSUMER PROTECTION
	) ACT [47 U.S.C. §227(c)]

DEMAND FOR JURY TRIAL

1 Plaintiff ABANTE ROOTER AND PLUMBING, INC. ("Plaintiff"),
2 individually and on behalf of all others similarly situated, alleges the following
3 upon information and belief based upon personal knowledge:

4 **NATURE OF THE CASE**

5 1. Plaintiff brings this action individually and on behalf of all others
6 similarly situated seeking damages and any other available legal or equitable
7 remedies resulting from the illegal actions of LEADS2RESULTS, INC. and OFER
8 ADLER ("Defendants"), in negligently, knowingly, and/or willfully contacting
9 Plaintiff on Plaintiff's cellular telephone in violation of the Telephone Consumer
10 Protection Act, 47 U.S.C. § 227 *et seq.* ("TCPA") and related regulations,
11 specifically the National Do-Not-Call provisions, thereby invading Plaintiff's
12 privacy.

13 **JURISDICTION & VENUE**

14 2. Jurisdiction is proper under 28 U.S.C. § 1332(d)(2) because Plaintiff,
15 a California corporation with its principal place of business also in California, seeks
16 relief on behalf of a Class, which will result in at least one class member belonging
17 to a different state than that of Defendants, a Florida corporation and its individual
18 owner. Plaintiff also seeks up to \$1,500.00 in damages for each call in violation of
19 the TCPA, which, when aggregated among a proposed class in the thousands,
20 exceeds the \$5,000,000.00 threshold for federal court jurisdiction. Therefore, both
21 diversity jurisdiction and the damages threshold under the Class Action Fairness
22 Act of 2005 ("CAFA") are present, and this Court has jurisdiction.

23 3. Venue is proper in the United States District Court for the Central
24 District of California pursuant to 28 U.S.C. 1391(b) because Defendants do
25 business within the State of California and Plaintiff resides within the County of
26 Alameda.

27 **PARTIES**

28 4. Plaintiff, ABANTE ROOTER AND PLUMBING, INC. ("Plaintiff"),

1 is a roofing and plumbing business in Emeryville, California and is a “person” as
2 defined by 47 U.S.C. § 153 (39).

3 5. Defendant, LEADS2RESULTS, INC. (“L2R”) is a marketing
4 company, and is a “person” as defined by 47 U.S.C. § 153 (39).

5 6. Defendant, OFER ADLER (“Adler”) is an individual who is the
6 owner of L2R, and is a “person” as defined by 47 U.S.C. § 153 (39).

7 7. The above-named Defendants, and their subsidiaries and agents, are
8 collectively referred to as “Defendants.” The true names and capacities of the
9 Defendants sued herein as DOE DEFENDANTS 1 through 10, inclusive, are
10 currently unknown to Plaintiff, who therefore sues such Defendants by fictitious
11 names. Each of the Defendants designated herein as a DOE is legally responsible
12 for the unlawful acts alleged herein. Plaintiff will seek leave of Court to amend the
13 Complaint to reflect the true names and capacities of the DOE Defendants when
14 such identities become known.

15 8. Plaintiff is informed and believes that at all relevant times, each and
16 every Defendant was acting as an agent and/or employee of each of the other
17 Defendants and was acting within the course and scope of said agency and/or
18 employment with the full knowledge and consent of each of the other Defendants.
19 Plaintiff is informed and believes that each of the acts and/or omissions complained
20 of herein was made known to, and ratified by, each of the other Defendants.

21 **FACTUAL ALLEGATIONS**

22 9. Beginning in or around August 2018, Defendants contacted Plaintiff
23 on Plaintiff’s cellular telephone number ending in -1080, in an attempt to solicit
24 Plaintiff to purchase Defendants’ services.

25 10. Defendants used an “automatic telephone dialing system” as defined
26 by 47 U.S.C. § 227(a)(1) to place its call to Plaintiff seeking to solicit its services.

27 11. Defendants contacted or attempted to contact Plaintiff from telephone
28 number (409) 908-3134.

1 12. Defendants' calls constituted calls that were not for emergency
2 purposes as defined by 47 U.S.C. § 227(b)(1)(A).

3 13. During all relevant times, Defendants did not possess Plaintiff's "prior
4 express consent" to receive calls using an automatic telephone dialing system or an
5 artificial or prerecorded voice on his cellular telephone pursuant to 47 U.S.C. §
6 227(b)(1)(A).

7 14. Further, Plaintiff's cellular telephone number ending in -1080 had
8 been on the National Do-Not-Call Registry well over thirty (30) days prior to
9 Defendants' initial calls.

10 15. Defendants placed multiple calls soliciting their business to Plaintiff
11 on its cellular telephone ending in -1080 in or around August 2018.

12 16. Such calls constitute solicitation calls pursuant to 47 C.F.R. §
13 64.1200(c)(2) as they were attempts to promote or sell Defendants' services.

14 17. Plaintiff received numerous solicitation calls from Defendants within
15 a 12-month period.

16 18. Plaintiff requested for Defendants to stop calling Plaintiff during one
17 of the initial calls from Defendants, thus revoking any prior express consent that
18 had existed and terminating any established business relationship that had existed,
19 as defined under 16 C.F.R. 310.4(b)(1)(iii)(B).

20 19. Despite this, Defendants continued to call Plaintiff in an attempt to
21 solicit its services and in violation of the National Do-Not-Call provisions of the
22 TCPA.

23 20. Upon information and belief, and based on Plaintiff's experiences of
24 being called by Defendants after requesting they stop calling, and at all relevant
25 times, Defendants failed to establish and implement reasonable practices and
26 procedures to effectively prevent telephone solicitations in violation of the
27 regulations prescribed under 47 U.S.C. § 227(c)(5).

28 ///

CLASS ALLEGATIONS

21. Plaintiff brings this action individually and on behalf of all others similarly situated, as a member the four proposed classes (hereafter, jointly, “The Classes”). The class concerning the ATDS claim for no prior express consent (hereafter “The ATDS Class”) is defined as follows:

All persons within the United States who received any solicitation/telemarketing telephone calls from Defendants to said person’s cellular telephone made through the use of any automatic telephone dialing system or an artificial or prerecorded voice and such person had not previously consented to receiving such calls within the four years prior to the filing of this Complaint through the date of class certification.

22. The class concerning the ATDS claim for revocation of consent, to the extent prior consent existed (hereafter “The ATDS Revocation Class”) is defined as follows:

All persons within the United States who received any solicitation/telemarketing telephone calls from Defendants to said person’s cellular telephone made through the use of any automatic telephone dialing system or an artificial or prerecorded voice and such person had revoked any prior express consent to receive such calls prior to the calls within the four years prior to the filing of this Complaint through the date of class certification.

23. The class concerning the National Do-Not-Call violation (hereafter “The DNC Class”) is defined as follows:

All persons within the United States registered on the National Do-Not-Call Registry for at least 30 days, who had not granted Defendants prior express consent nor

1 had a prior established business relationship, who
2 received more than one call made by or on behalf of
3 Defendants that promoted Defendants' products or
4 services, within any twelve-month period, within four
years prior to the filing of the complaint through the date
of class certification.

5 24. The class concerning the National Do-Not-Call violation following
6 revocation of consent and prior business relationship, to the extent they existed
7 (hereafter "The DNC Revocation Class") is defined as follows:
8

9 All persons within the United States registered on the
10 National Do-Not-Call Registry for at least 30 days, who
11 received more than one call made by or on behalf of
12 Defendants that promoted Defendants' products or
13 services, after having revoked consent and any prior
14 established business relationship, within any twelve-
month period, within four years prior to the filing of the
complaint through the date of class certification.

15 25. Plaintiff represents, and is a member of, The ATDS Class, consisting
16 of all persons within the United States who received any solicitation telephone calls
17 from Defendants to said persons' cellular telephones made through the use of any
18 automatic telephone dialing system or an artificial or prerecorded voice and such
19 persons had not previously not provided their cellular telephone number to
20 Defendants within the four years prior to the filing of this Complaint.

21 26. Plaintiff represents, and is a member of, The ATDS Revocation Class,
22 consisting of all persons within the United States who received any
23 solicitation/telemarketing telephone calls from Defendants to said persons' cellular
24 telephones made through the use of any automatic telephone dialing system or an
25 artificial or prerecorded voice and such persons had revoked any prior express
26 consent to receive such calls prior to the calls within the four years prior to the
27 filing of this Complaint.

28 27. Plaintiff represents, and is a member of, The DNC Class, consisting

1 of all persons within the United States registered on the National Do-Not-Call
2 Registry for at least 30 days, who had not granted Defendants prior express consent
3 nor had a prior established business relationship, who received more than one call
4 made by or on behalf of Defendants that promoted Defendants' products or
5 services, within any twelve-month period, within four years prior to the filing of
6 the complaint.

7 28. Plaintiff represents, and is a member of, The DNC Revocation Class,
8 consisting of all persons within the United States registered on the National Do-
9 Not-Call Registry for at least 30 days, who received more than one call made by or
10 on behalf of Defendants that promoted Defendants' products or services, after
11 having revoked consent and any prior established business relationship, within any
12 twelve-month period, within four years prior to the filing of the complaint.

13 29. Defendants, their employees and agents are excluded from The
14 Classes. Plaintiff does not know the number of members in The Classes, but
15 believes the Classes members number in the thousands, if not more. Thus, this
16 matter should be certified as a Class Action to assist in the expeditious litigation of
17 the matter.

18 30. The Classes are so numerous that the individual joinder of all of its
19 members is impractical. While the exact number and identities of The Classes
20 members are unknown to Plaintiff at this time and can only be ascertained through
21 appropriate discovery, Plaintiff is informed and believes and thereon alleges that
22 The Classes includes thousands of members. Plaintiff alleges that The Classes
23 members may be ascertained by the records maintained by Defendants.

24 31. Plaintiff and members of The ATDS Class and The ATDS Revocation
25 Class were harmed by the acts of Defendants in at least the following ways:
26 Defendants illegally contacted Plaintiff and ATDS Class members via their cellular
27 telephones thereby causing Plaintiff and ATDS Class and ATDS Revocation Class
28 members to incur certain charges or reduced telephone time for which Plaintiff and

1 ATDS Class and ATDS Revocation Class members had previously paid by having
2 to retrieve or administer messages left by Defendants during those illegal calls, and
3 invading the privacy of said Plaintiff and ATDS Class and ATDS Revocation Class
4 members.

5 32. Common questions of fact and law exist as to all members of The
6 ATDS Class which predominate over any questions affecting only individual
7 members of The ATDS Class. These common legal and factual questions, which
8 do not vary between ATDS Class members, and which may be determined without
9 reference to the individual circumstances of any ATDS Class members, include,
10 but are not limited to, the following:

- 11 a. Whether, within the four years prior to the filing of this
12 Complaint, Defendants made any telemarketing/solicitation
13 call (other than a call made for emergency purposes or made
14 with the prior express consent of the called party) to an ATDS
15 Class member using any automatic telephone dialing system or
16 any artificial or prerecorded voice to any telephone number
17 assigned to a cellular telephone service;
- 18 b. Whether Plaintiff and the ATDS Class members were damaged
19 thereby, and the extent of damages for such violation; and
- 20 c. Whether Defendants should be enjoined from engaging in such
21 conduct in the future.

22 33. As a person that received numerous telemarketing/solicitation calls
23 from Defendants using an automatic telephone dialing system or an artificial or
24 prerecorded voice, without Plaintiff's prior express consent, Plaintiff is asserting
25 claims that are typical of The ATDS Class.

26 34. Common questions of fact and law exist as to all members of The
27 ATDS Revocation Class which predominate over any questions affecting only
28 individual members of The ATDS Revocation Class. These common legal and

1 factual questions, which do not vary between ATDS Revocation Class members,
2 and which may be determined without reference to the individual circumstances of
3 any ATDS Revocation Class members, include, but are not limited to, the
4 following:

- 5 a. Whether, within the four years prior to the filing of this
6 Complaint, Defendants made any telemarketing/solicitation
7 call (other than a call made for emergency purposes or made
8 with the prior express consent of the called party) to an ATDS
9 Revocation Class member, who had revoked any prior express
10 consent to be called using an ATDS, using any automatic
11 telephone dialing system or any artificial or prerecorded voice
12 to any telephone number assigned to a cellular telephone
13 service;
- 14 b. Whether Plaintiff and the ATDS Revocation Class members
15 were damaged thereby, and the extent of damages for such
16 violation; and
- 17 c. Whether Defendants should be enjoined from engaging in such
18 conduct in the future.

19 35. As a person that received numerous telemarketing/solicitation calls
20 from Defendants using an automatic telephone dialing system or an artificial or
21 prerecorded voice, after Plaintiff had revoked any prior express consent, Plaintiff
22 is asserting claims that are typical of The ATDS Revocation Class.

23 36. Plaintiff and members of The DNC Class and DNC Revocation Class
24 were harmed by the acts of Defendants in at least the following ways: Defendants
25 illegally contacted Plaintiff and DNC Class and DNC Revocation Class members
26 via their telephones for solicitation purposes, thereby invading the privacy of said
27 Plaintiff and the DNC Class and DNC Revocation Class members whose telephone
28 numbers were on the National Do-Not-Call Registry. Plaintiff and the DNC Class

1 and DNC Revocation Class members were damaged thereby.

2 37. Common questions of fact and law exist as to all members of The
3 DNC Class which predominate over any questions affecting only individual
4 members of The DNC Class. These common legal and factual questions, which do
5 not vary between DNC Class members, and which may be determined without
6 reference to the individual circumstances of any DNC Class members, include, but
7 are not limited to, the following:

- 8 a. Whether, within the four years prior to the filing of this
9 Complaint, Defendants or their agents placed more than one
10 solicitation call to the members of the DNC Class whose
11 telephone numbers were on the National Do-Not-Call Registry
12 and who had not granted prior express consent to Defendants
13 and did not have an established business relationship with
14 Defendants;
- 15 b. Whether Defendants obtained prior express written consent to
16 place solicitation calls to Plaintiff or the DNC Class members'
17 telephones;
- 18 c. Whether Plaintiff and the DNC Class member were damaged
19 thereby, and the extent of damages for such violation; and
- 20 d. Whether Defendants and their agents should be enjoined from
21 engaging in such conduct in the future.

22 38. As a person that received numerous solicitation calls from Defendants
23 within a 12-month period, who had not granted Defendants prior express consent
24 and did not have an established business relationship with Defendants, Plaintiff is
25 asserting claims that are typical of the DNC Class.

26 39. Common questions of fact and law exist as to all members of The
27 DNC Class which predominate over any questions affecting only individual
28 members of The DNC Revocation Class. These common legal and factual

1 questions, which do not vary between DNC Revocation Class members, and which
2 may be determined without reference to the individual circumstances of any DNC
3 Revocation Class members, include, but are not limited to, the following:

- 4 a. Whether, within the four years prior to the filing of this
5 Complaint, Defendants or their agents placed more than one
6 solicitation call to the members of the DNC Class whose
7 telephone numbers were on the National Do-Not-Call Registry
8 and who had revoked any prior express consent and any
9 established business relationship with Defendants;
- 10 b. Whether Plaintiff and the DNC Class member were damaged
11 thereby, and the extent of damages for such violation; and
- 12 c. Whether Defendants and their agents should be enjoined from
13 engaging in such conduct in the future.

14 40. As a person that received numerous solicitation calls from Defendants
15 within a 12-month period, who, to the extent one existed, had revoked any prior
16 express consent and any established business relationship with Defendants,
17 Plaintiff is asserting claims that are typical of the DNC Revocation Class.

18 41. Plaintiff will fairly and adequately protect the interests of the members
19 of The Classes. Plaintiff has retained attorneys experienced in the prosecution of
20 class actions.

21 42. A class action is superior to other available methods of fair and
22 efficient adjudication of this controversy, since individual litigation of the claims
23 of all Classes members is impracticable. Even if every Classes member could
24 afford individual litigation, the court system could not. It would be unduly
25 burdensome to the courts in which individual litigation of numerous issues would
26 proceed. Individualized litigation would also present the potential for varying,
27 inconsistent, or contradictory judgments and would magnify the delay and expense
28 to all parties and to the court system resulting from multiple trials of the same

1 complex factual issues. By contrast, the conduct of this action as a class action
 2 presents fewer management difficulties, conserves the resources of the parties and
 3 of the court system, and protects the rights of each Classes member.

4 43. The prosecution of separate actions by individual Classes members
 5 would create a risk of adjudications with respect to them that would, as a practical
 6 matter, be dispositive of the interests of the other Classes members not parties to
 7 such adjudications or that would substantially impair or impede the ability of such
 8 non-party Class members to protect their interests.

9 44. Defendants have acted or refused to act in respects generally
 10 applicable to The Classes, thereby making appropriate final and injunctive relief
 11 with regard to the members of the Classes as a whole.

12 **FIRST CAUSE OF ACTION**

13 **Negligent Violations of the Telephone Consumer Protection Act**

14 **47 U.S.C. §227(b).**

15 **On Behalf of the ATDS Class and ATDS Revocation Class**

16 45. Plaintiff repeats and incorporates by reference into this cause of action
 17 the allegations set forth above at Paragraphs 1-44.

18 46. The foregoing acts and omissions of Defendants constitute numerous
 19 and multiple negligent violations of the TCPA, including but not limited to each
 20 and every one of the above cited provisions of *47 U.S.C. § 227(b)*, and in particular
 21 *47 U.S.C. § 227 (b)(1)(A)*.

22 47. As a result of Defendants' negligent violations of *47 U.S.C. § 227(b)*,
 23 Plaintiff and the Class Members are entitled an award of \$500.00 in statutory
 24 damages, for each and every violation, pursuant to *47 U.S.C. § 227(b)(3)(B)*.

25 48. Plaintiff and the ATDS Class and ATDS Revocation Class members
 26 are also entitled to and seek injunctive relief prohibiting such conduct in the future.

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SECOND CAUSE OF ACTION

Knowing and/or Willful Violations of the Telephone Consumer Protection Act

47 U.S.C. §227(b)

On Behalf of the ATDS Class and the ATDS Revocation Class

49. Plaintiff repeats and incorporates by reference into this cause of action the allegations set forth above at Paragraphs 1-44.

50. The foregoing acts and omissions of Defendants constitute numerous and multiple knowing and/or willful violations of the TCPA, including but not limited to each and every one of the above cited provisions of *47 U.S.C. § 227(b)*, and in particular *47 U.S.C. § 227 (b)(1)(A)*.

51. As a result of Defendants' knowing and/or willful violations of *47 U.S.C. § 227(b)*, Plaintiff and the ATDS Class and ATDS Revocation Class members are entitled an award of \$1,500.00 in statutory damages, for each and every violation, pursuant to *47 U.S.C. § 227(b)(3)(B)* and *47 U.S.C. § 227(b)(3)(C)*.

52. Plaintiff and the Class members are also entitled to and seek injunctive relief prohibiting such conduct in the future.

THIRD CAUSE OF ACTION

Negligent Violations of the Telephone Consumer Protection Act

47 U.S.C. §227(c)

On Behalf of the DNC Class and the DNC Revocation Class

53. Plaintiff repeats and incorporates by reference into this cause of action the allegations set forth above at Paragraphs 1-44.

54. The foregoing acts and omissions of Defendants constitute numerous and multiple negligent violations of the TCPA, including but not limited to each and every one of the above cited provisions of *47 U.S.C. § 227(c)*, and in particular *47 U.S.C. § 227 (c)(5)*.

55. As a result of Defendants' negligent violations of *47 U.S.C. § 227(c)*,

1 Plaintiff and the DNC Class and DNC Revocation Class Members are entitled an
 2 award of \$500.00 in statutory damages, for each and every violation, pursuant to
 3 *47 U.S.C. § 227(c)(5)(B)*.

4 56. Plaintiff and the DNC Class and DNC Revocation Class members are
 5 also entitled to and seek injunctive relief prohibiting such conduct in the future.

6 **FOURTH CAUSE OF ACTION**

7 **Knowing and/or Willful Violations of the Telephone Consumer Protection** 8 **Act**

9 **47 U.S.C. §227 et seq.**

10 **On Behalf of the DNC Class and DNC Revocation Class**

11 57. Plaintiff repeats and incorporates by reference into this cause of action
 12 the allegations set forth above at Paragraphs 1-44.

13 58. The foregoing acts and omissions of Defendants constitute numerous
 14 and multiple knowing and/or willful violations of the TCPA, including but not
 15 limited to each and every one of the above cited provisions of *47 U.S.C. § 227(c)*,
 16 in particular *47 U.S.C. § 227 (c)(5)*.

17 59. As a result of Defendants' knowing and/or willful violations of *47*
 18 *U.S.C. § 227(c)*, Plaintiff and the DNC Class and DNC Revocation Class members
 19 are entitled an award of \$1,500.00 in statutory damages, for each and every
 20 violation, pursuant to *47 U.S.C. § 227(c)(5)*.

21 60. Plaintiff and the DNC Class and DNC Revocation Class members are
 22 also entitled to and seek injunctive relief prohibiting such conduct in the future.

23 **PRAYER FOR RELIEF**

24 WHEREFORE, Plaintiff requests judgment against Defendants for the following:

25 **FIRST CAUSE OF ACTION**

26 **Negligent Violations of the Telephone Consumer Protection Act**

27 **47 U.S.C. §227(b)**

- 28 • As a result of Defendants' negligent violations of *47 U.S.C.*

§227(b)(1), Plaintiff and the ATDS Class and ATDS Revocation Class members are entitled to and request \$500 in statutory damages, for each and every violation, pursuant to 47 U.S.C. 227(b)(3)(B).

- Any and all other relief that the Court deems just and proper.

SECOND CAUSE OF ACTION

Knowing and/or Willful Violations of the Telephone Consumer Protection

Act

47 U.S.C. §227(b)

- As a result of Defendants' willful and/or knowing violations of 47 U.S.C. §227(b)(1), Plaintiff and the ATDS Class and ATDS Revocation Class members are entitled to and request treble damages, as provided by statute, up to \$1,500, for each and every violation, pursuant to 47 U.S.C. §227(b)(3)(B) and 47 U.S.C. §227(b)(3)(C).

- Any and all other relief that the Court deems just and proper.

THIRD CAUSE OF ACTION

Negligent Violations of the Telephone Consumer Protection Act

47 U.S.C. §227(c)

- As a result of Defendants' negligent violations of 47 U.S.C. §227(c)(5), Plaintiff and the DNC Class and DNC Revocation Class members are entitled to and request \$500 in statutory damages, for each and every violation, pursuant to 47 U.S.C. 227(c)(5).

- Any and all other relief that the Court deems just and proper.

FOURTH CAUSE OF ACTION

Knowing and/or Willful Violations of the Telephone Consumer Protection

Act

47 U.S.C. §227(c)

- As a result of Defendants' willful and/or knowing violations of 47 U.S.C. §227(c)(5), Plaintiff and the DNC Class and DNC Revocation

1 Class members are entitled to and request treble damages, as provided
2 by statute, up to \$1,500, for each and every violation, pursuant to 47
3 *U.S.C. §227(c)(5)*.

- 4 • Any and all other relief that the Court deems just and proper.

5 61. Pursuant to the Seventh Amendment to the Constitution of the United
6 States of America, Plaintiff is entitled to, and demands, a trial by jury.

7 Respectfully Submitted this 25th Day of March, 2020.

8 LAW OFFICES OF TODD M. FRIEDMAN, P.C.

9
10 By: /s/ Todd M. Friedman
11 Todd M. Friedman
12 Law Offices of Todd M. Friedman
13 Attorney for Plaintiff
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